## BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

| MICHAEL J. SAHADI                                       | }                  |
|---|--------------------|
| Claimant<br>VS.   | Docket No. 204,294 |
| PLAZA INN/MICKEY'S LANDING                              | Docket No. 204,294 |
| Respondent<br>AND                                       | {                  |
| UNITED STATES FIDELITY & GUARANTY CO. Insurance Carrier | }                  |

## **ORDER**

Claimant appeals from an October 5, 1995 preliminary hearing Order of Administrative Law Judge Floyd V. Palmer which denied claimant's request for preliminary benefits.

## <u>Issues</u>

On appeal, claimant contends that he has met his burden of proving a compensable accidental injury which arose out of and in the course of his employment with respondent. That is the issue upon which review is requested.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The finding by the Administrative Law Judge that claimant has not carried his burden of proving that he met with personal injury by accident arising out of and in the course of his employment with respondent should be affirmed.

The parties presented a number of witnesses as a part of the preliminary hearing in this matter, some of whom testified more than once. In addition to the fact witnesses and the medical evidence, both parties introduced scientific and expert testimony in support of their respective positions. This evidence primarily pertained to whether or not the accident occurred as alleged. As such, it is not only relevant to the issue of causation, but also credibility.

Respondent's witnesses call into question the claimant's credibility. On the other hand, claimant's expert witness refutes the respondent's expert and is thereby intended to bolster claimant's testimony as to how the accident occurred. Clearly, credibility of the witnesses and, in particular, of claimant is central to a resolution of this claim.

The Administrative Law Judge had the opportunity to observe the in-person testimony of the claimant as well as certain of the other witnesses. He determined that

claimant failed to carry his burden of proof that the alleged accidental injury arose out of and in the course of employment. The Appeals Board takes into consideration the Administrative Law Judge's opportunity to observe claimant's testimony in assessing his credibility. Accordingly, the Appeals Board gives some deference to his conclusions in that regard.

Based upon the Appeals Board review of the record as a whole, including the expert and lay witness testimony and the medical records and reports in evidence, we find that the Order denying medical treatment by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the October 5, 1995 Order of Administrative Law Judge Floyd V. Palmer should be, and the same is, hereby affirmed.

|    | IT IS SO ORDERED.        |              |
|----|--------------------------|--------------|
|    | Dated this day of Jar    | nuary 1996.  |
|    |                          | BOARD MEMBER |
|    |                          |              |
|    |                          | BOARD MEMBER |
|    |                          | BOARD MEMBER |
| C. | Roger D. Fincher, Toneka | KS           |

c: Roger D. Fincher, Topeka, KS Ronald J. Laskowski, Topeka, KS Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director